

### **REMARKS**

Applicant respectfully requests reconsideration of the present application in view of the amendments set forth above and the remarks below. Applicant submits that entry of this amendment is called for under 37 C.F.R. §1.116 since it places the application in condition for allowance.

Claims 13-39 are pending in the application and stand rejected. Claim 13 is herein amended to incorporate the subject matter of claim 15, which is herein cancelled without prejudice. Claim 28 is amended to clarify an angle of the tine truncated end surfaces. Claim 33 is amended to clarify the flexing feature of the tines. And claim 37 is amended in substantially similarity with claim 13 to incorporate the subject matter of claims 38 and 39, which are herein cancelled without prejudice.

#### **The Claim Objections**

The Examiner objects to claims 17 and 33 due to certain informalities. Applicant believes that the amendment to claim 13 renders moot the antecedent basis problem with claim 17. Applicant amends claim 33 to address the Examiner's assertion with regard to inconsistency of the claims and specification. Support for the amendment to claim 33 is found, for example, in paragraph [0009] of the specification.

#### **The Prior Art Rejections.**

The Examiner rejects claims 13, 14, 18-30, 22 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as being obvious over Gibbs D23,660. Applicant submits this rejection is rendered moot in view of the amendment of claim 13 to include the subject matter of claim 15 for the reasons set forth below in detail.

Claims 15-17, 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs '660 in view of U.S. Patent No. D 389,024 to Jensen, Jr.

Claim 13 is amended to incorporate the subject matter of claim 15 so as to require a grading rake including a plurality of tines extending from the rake head for grading particulate matter, wherein an *angle between the plurality of tines and the handle* ranges from about *thirty degrees to about sixty degrees*, and wherein the plurality of tines include a *truncated end surface* forming an *angle with the handle* ranging from about *plus ten degrees to negative ten degrees*. With this arrangement, as the user rakes particulate matter, such as soil, the truncated end surfaces ride on top of the soil surface while large particles, such as rocks, are drawn up into the tines and out of the soil.

The Examiner proposes a combination of Gibbs and Jensen to arrive at the claimed invention. Applicant respectfully traverses this rejection.

Gibbs teaches a lawn rake having parallel teeth with inclined inwardly projecting lower ends C<sup>4</sup>. The Examiner recognizes that Gibbs does not disclose “providing the tines with truncated ends” and relies upon Jensen to teach this feature.

Jensen discloses an adjustable *shovel* head. The Examiner alleges that Jensen teaches a tool having a plurality of “tines...having truncated ends”. Applicant respectfully and fully disagrees with this characterization of Jensen. Applicant submits that Jensen’s *shovel*, as clearly defined by the title “Adjustable Shovel Head,” includes *serrations* and nothing remotely approaching *tines*. As set forth in the Merriam-Webster Online dictionary, the word *tine* refers to “a slender pointed projecting part.” (copy enclosed). Moreover, Applicant submits that a rake *tine* requires such a structure to fulfill its function.

Accordingly, Applicant submits that Jensen does not teach or suggest a rake including a plurality of tines include a truncated end surface forming an angle with the handle ranging from about plus ten degrees to negative ten degrees, as claimed.

Moreover, Applicant submits that the Examiner’s proposed modification of Gibbs with Jensen is improper and does not establish *prima facie* obviousness.

The Examiner proposes to modify the rake of Gibbs with the shovel serrations of Jensen. It is readily apparent that such a modification, i.e., serrations, to the lawn rake of Gibbs would render it useless as a lawn rake.

Further, there is no motivation anywhere in Gibbs or Jensen for the proposed modification. Applicant respectfully points out that Gibbs and Jensen are design patents without substantive description. As such, it is not possible for the Examiner to identify the required suggestion or motivation in the references for the proposed combination.

Notwithstanding the lack of motivation to combine in the Gibbs and Jensen design patents, Applicant submits that the *lawn rake* of Gibbs would not be enhanced by the serrations of Jensen. Applicant submits that while the serrations on the shovel blade of Jensen's shovel may be useful for frozen snow or packed dirt, such serrations would not improve Gibbs' lawn rake.

Accordingly, Applicant submits that claim 13 is patentably distinguishable over Gibbs and Jensen, taken alone or in combination. For substantially the same reasons, Applicant submits that claims 14 and 16-37 are patentably distinguishable over the cited references.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs '660 in view of Fuller '065. Claims 23, 25, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs '660 in view of U.S. Patent No. 3,838,474 to Erickson. Claims 33-36 are rejected under 35 U.S.C.103(a) as being unpatentable over Gibbs '660 in view of Jensen, Jr. D U.S. Patent No. D 389,024 as applied to claim 28 above, and further in view of Erickson '474. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs '660 in view of U.S. Patent No. 4,063,407 to Tansey. And Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. D271,936 to Fyffe et al. in view of U.S. Patent No. 4,173,835 to Burrell.

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Applicant submits that these rejections are rendered moot by the amendments to claims 13, 28 and 35, for the reasons set forth above in detail in conjunction with the rejections made in view of Gibbs and Jensen. Applicant does not, however, acquiesce to the above rejections.

In view of the above, Applicant submits that claims 13, 14, 16-37 are in condition for allowance and notice thereof is respectfully requested.

The Examiner is encouraged to contact the undersigned to discuss any matter in furtherance of the present application. Applicant does not acquiesce to any assertion made by the Examiner that is not explicitly addressed in this submission.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-0845.

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Respectfully submitted,



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